

Report to the Board of Adjustment

Prepared by the Maricopa County Planning and Development Department

Case: BA2006029

Variance

Hearing Date:

May 10, 2006 (Continued from April 12, 2006)

Agenda Item:

6

Supervisory District:

3

Applicant/Owner:

Terry Lazin

Request:

Variances to permit:

- 1) An existing single-family residence to setback 19.7 feet from the side (east) property line where 30 feet is the minimum required,
- 2) An existing accessory structure (pump house) to setback 28 feet from the side (east) property line where 30 feet is the minimum required,
- 3) An existing accessory structure (pump house) to setback 12 feet 5 inches from the front (south) property line where 40 feet is the minimum required; and
- 4) The average height of a retaining wall to be 11.5 feet where 11 feet is the maximum allowed in the Rural-43 zoning district.

These variances are requested from the following Zoning Ordinance Section(s):

- 1 & 2) Section 503, Article 503.4.2
- 3) Section 503, Article 503.4.1a
- 4) Section 1201, Article 1201.6.2.4

Site Location:

7535 North Clearwater Parkway – Tatum Boulevard and Clearwater Hills Drive (Phoenix/Paradise Valley area)

Site Size:

90,833 square feet (2.1 acres)

Existing Zoning:

Rural-43

Current Use: Residential

Citizen

Support/Opposition: One E-mail of preliminary approval from the Clearwater Hills Homeowner's Association had been received at the time this report was written. No opposition is known.

Staff

Recommendation: **Approve** with stipulations

Existing On-Site and Surrounding Zoning:

1. On-site: Rural-43
North: Rural-43
South: Rural-43
East: Rural-43
West: Rural-43

Existing On-Site and Surrounding Land Use:

2. On-site: Single-family residence
North: Single-family residence
South: Single-family residence/Clearwater Parkway
East: Vacant
West: Single-family residence

Background:

3. **September 7, 1955:** The Clearwater Hills subdivision was recorded.
4. **February 15, 1983:** Maricopa County adopted its Hillside Ordinance.
5. **June 19, 1992:** Building permit **92078214** was issued for the construction of a single-family residence on the subject site.
6. **July 17, 2000:** The current owner took possession of the subject site via a Warranty Deed recorded under docket **000540668**.
7. **August 26, 2005:** The owner applied for building permit **B200512182** to build a pool on the subject site.
8. **March 6, 2006:** The owner applied for legal, non-conforming status for existing hillside disturbance on the subject site under case **LU20060010**.
9. **March 6, 2006:** The owner applied for these variance requests.

10. **March 31, 2006:** Case **LU20060010** was approved by staff establishing legal nonconforming status of the existing disturbance area on the subject property.
11. **April 12, 2006:** This case was forwarded to the May 10, 2006 hearing date due to a lack of quorum.

Findings:

12. **Maricopa County Department of Transportation:** No response at the time this report was written.
13. **Flood Control District:** No response at the time this report was written.
14. **Environmental Services Department:** No response at the time this report was written.
15. **Drainage Administration:** No drainage concerns.
16. **Clearwater Hills Homeowners Association:** Granted preliminary approval subject to homeowner's design.

Site Analysis:

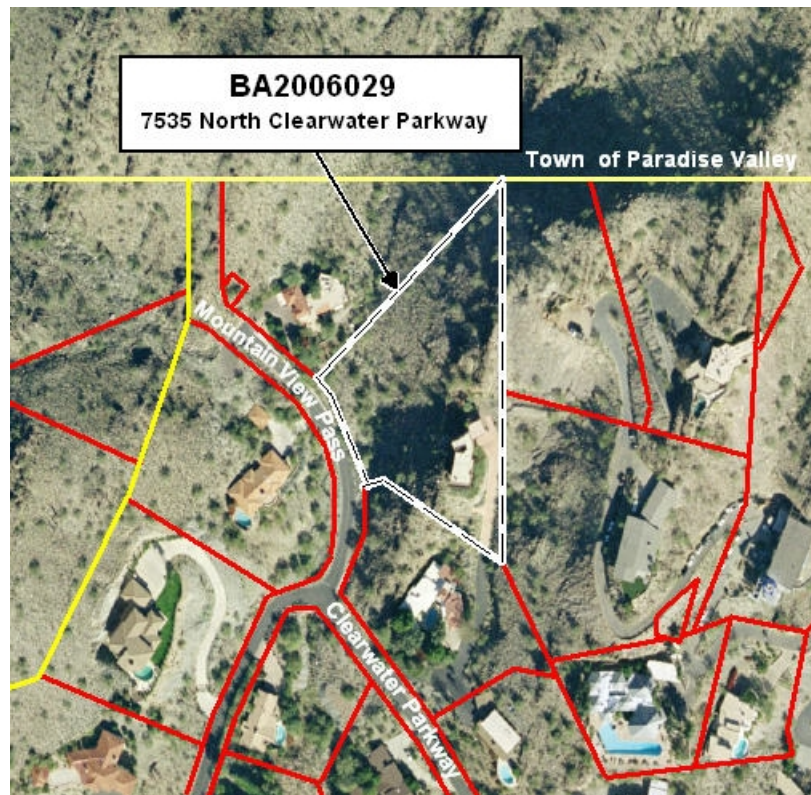
17. The subject site is an irregularly shaped lot located near the terminus of Clearwater Parkway, a local street. There are major hardships present on the subject site both in the unusual configuration of the subject site and with the existing topographical conditions. This lot is steep and rocky, in some portions with a slope typically in excess of 25% and, in some areas, exceeding 30%. There is a steep slope to the east of the residence and a large rock outcropping immediately to the west of the residence. The rear of the property slopes down to the northwest and the site slopes significantly downward at the front. When the site was originally developed, a flat portion was cleared at the top of the driveway for the primary residence. The applicant is proposing to add an 8 foot by 35 foot swimming pool at the front of the existing patio, extending the patio to the south by approximately two feet. There is an existing 3,517 square foot residence with an attached 540 square foot garage, a 144 square foot pump house, and covered outdoor areas totaling 3,752 square feet on the subject site.
18. The two-story residence is accessed via a steep (greater than 20% grade) concrete driveway that provides access from Clearwater Parkway. Like other properties in Clearwater Hills, the subject site was platted and a building pad was cleared prior to building the primary residence. There is a small pump house located at the base of the driveway, with the house and garage at the top. A small concrete turn-around is located about half way up the drive. There is a small parking space alongside the garage. Most of the site is undisturbed, with natural desert vegetation and exposed rock surfaces. There is a concrete patio on the south side of the house with an existing

retaining wall with a built-in bench that will be replaced when the proposed pool is built. There are a number of low walls and patios in the rear yard. Wastewater is disposed of via a septic system, with the septic tank located under the patio and the drainage field placed at the rear of the residence due to the slope and rocky terrain. There is a six foot high screen wall at the southeast corner of the residence and no other tall screen walls on the subject site. The parcel immediately to the east of the subject site slopes steeply upward from the driveway.

19. The following table is included to illustrate and contrast the standards for the underlying zoning district with those proposed by the applicant.

Standard	Rural-43 Zoning District	Proposed Standard
Front Yard Setback	40-feet	12-feet 5-inches
Rear Yard Setback	40-feet	178-feet
Side Yard Setback	30-feet	19.7-feet
Street Side Setback	20-feet	n/a
Maximum Height	30-feet/2 stories	30-feet/2 stories
Minimum Lot Area	43,560-sq. ft.	90,833-sq. ft.
Minimum Lot Width	145-feet	190.4-feet
Lot Coverage	15%	6%
Avg. Retaining Wall Height	11-feet	11.5-feet

*Standards indicated in **bold** do not meet minimum base zoning standards.



Aerial view of subject property and surrounding area

Land Use Analysis:

20. The subject site is located west of Tatum Boulevard and north of Lincoln Drive in the Clearwater Hills subdivision. Clearwater Hills is a Class 1a County Island bordered by the Town of Paradise Valley to the north, south and east, and by the City of Phoenix to the west. The Phoenix Mountain Preserve abuts the north and west boundaries of Clearwater Hills. Residential subdivisions of similar character to Clearwater Hills, located in the Town of Paradise Valley, border the south and east sides of Clearwater Hills.
21. The Clearwater Hills subdivision is a gated community comprised of two units, Clearwater Hills, the original subdivision, and Clearwater Hills Unit Two. Clearwater Hills Unit Two is adjacent to the southern and western boundaries of the original subdivision. Clearwater Hills Unit Two subdivision was recorded in 1959 with 73 lots. Many of the lots in Clearwater Hills (Unit One) are considered hillside lots, and all of the lots in Clearwater Hills Unit Two are considered hillside. Eleven of the lots in Clearwater Hills Unit Two have been annexed by Paradise Valley. The subject site is located in the northernmost portion of Clearwater Hills Unit One and adjacent to the Paradise Valley municipal boundary.
22. Staff research indicates that many previous Board of Adjustment cases have been heard within this subdivision and within one mile of the subject property. A summary of recent variance requests include the following:
 - Case **BA2005018** was for requests to permit: 1) an existing single-family residence to setback 1-foot from the rear (west) property line where 10 feet is the minimum required, 2) an existing building separation distance (single-family residence/studio) of 12.44 feet where 15 feet is the minimum required, 3) an existing retaining wall to setback 0 feet from the rear (west) property line where 2 feet is the minimum required, 4) an existing retaining wall height of 5.5 feet where 3 feet is the maximum allowed, 5) an existing lot coverage of 19.67% where 19.3% is the maximum allowed; and 6) a proposed pool barrier fence height of 7 feet outside the lot's buildable area where 3 feet is the maximum allowed. The Board approved these requests with stipulations with a 3 to 1 vote. The property is located at 7302 N. Red Ledge Drive, less than ½ mile south of the subject site.
 - Case **BA2005011** was for requests to permit: 1) a proposed lot coverage of 20.5% where 15% is the maximum allowed, 2) a proposed single-family residence to setback 20.2 feet from the side (west) property line where 30 feet is the minimum required, 3) a proposed single-family residence to setback 21.8 feet from the side (east) property line where 30 feet is the minimum required; and 4) an existing hillside area disturbance of 74% where 15% hillside area disturbance is the maximum allowed. The Board approved these requests with stipulations. The property is located at 4201 E. Lakeside Lane, approximately ½ mile southwest of the subject site.

- Case **BA2005007** was for requests to permit: 1) a proposed single-family residence to setback 20.2 feet from the front (east) property line where 40 feet is the minimum required; 2) a proposed hillside area disturbance of 37.7% where 15% is the maximum allowed; 3) the maximum height of a retaining wall to be 20.5 feet where 13 feet is the maximum allowed; 4) the average height of a retaining wall to be 19.25 feet where 8 feet is the maximum allowed; 5) the height of the proposed driveway fill slope to be a maximum of 15.5 feet where 12 feet is the maximum combined height allowed; 6) a proposed driveway to be built on 100% fill material where 1/3 fill material (33%) is the maximum allowed; and 7) a proposed 7 foot retaining wall where a three foot retaining wall is the maximum allowed. The Board approved these requests with stipulations. The property is located at 7024 North Longlook Road, approximately $\frac{3}{4}$ of a mile west of the subject site.
- Case **BA2004013** was for requests to permit: 1) an existing lot coverage of 16.2% (7,400 square feet) where 15% (6,836 square feet) is the maximum allowed, 2) a proposed lot coverage of 19% (8,678 square feet) where 15% (6,836 square feet) is the maximum allowed, 3) a proposed addition to an existing single family residence to setback 8 feet 8 inches from the front (north) property line where 40 feet is the maximum allowed, 4) an existing detached carport to setback 28 feet 7 inches from the front (north) property line where 40 feet is the minimum required, 5) an existing retaining wall in the side setback to exceed a height of 30 feet where 6 feet is the maximum height allowed; and 6) an existing building separation distance of 3 feet where 15 feet is the minimum required. The Board approved these requests with stipulations. The property is located at 7540 N. Silvercrest Way, approximately 180 feet southeast of the subject site.

Plan Analysis:

23. These requests are for multiple variances to permit an existing single-family residence to setback 19.7 feet from the side (east) property line where 30 feet is the minimum required; an existing accessory structure (pump house) to setback 28 feet from the side (east) property line where 30 feet is the minimum required; an existing accessory structure (pump house) to setback 12 feet 5 inches from the front (south) property line where 40 feet is the minimum required; and the average height of a retaining wall to be 11.5 feet where 11 feet is the maximum allowed in the Rural-43 zoning district. These requests came about when the owner submitted for a building permit to add a swimming pool onto the existing patio. The proposed hillside disturbance for the pool will add 562 square feet of additional disturbance to the existing 9,312 square feet. The total hillside disturbance on the subject site is 11.5 percent.

24. Variance request one is to permit the existing residence, specifically the garage, to setback 19.7 feet from the side (east) property line. Staff aerial photo research shows the garage was built between 1998 and 1999 but no permits were found. The applicant states in the Supplemental Application that the original plans for the house and garage were submitted by the previous owners. Staff believes that the house and garage may have been permitted together and built at different times. Normally, the 30 foot setback measurement is taken from the side property line or an easement. The house itself, without the attached garage, is greater than 30 feet from the east property line. The reduced setback is due in large part to the topography. No other structure will be built nearer to the garage because of the extreme slope conditions to the east of the house. Even though the garage is setback from the property line 19.7 feet, this places the closest portion of the residence more than 30 feet from any future structure to the east. Staff is of the opinion that granting the request will have little or no impact on surrounding properties. The unusual configuration of the site, in conjunction with adjacent slope, creates topographic hardships that are difficult to overcome. Staff recommends approval of variance request one.
25. Request two and three, relate to the placement of the pump house that covers the water booster pump. While researching aerial photographs from the Maricopa County Assessor's website, staff was unable to determine when the pump house was placed in its current location but that it has been in place since at least 1996 and probably was installed at the same time the house was built. Based on the stucco applied to its exterior surface, it is probably safe to assume that it was built when the house was. Although the previous owner built the pump house, staff was unable to find any record that pump house had ever been permitted.
26. Staff acknowledges that wells, storage tanks, and pump houses are a very common occurrence in areas that require well water. Unfortunately, a developer or property owner(s) tend to put them in places most convenient without any regard to the zoning setbacks for structures or even that the need for a building permit exists. In this case, the extreme slopes associated with the lot probably affected the initial siting of the pump house. The southern portion of the subject site has a lesser slope and the pump house was built in its current location lessening the site disturbance. The topography on much of this site is extreme and providing water to the residence requires an additional "boost". Staff recognizes the need for the water booster pump and that siting that pump as near to the well head as possible is important. While these requests were self-created, staff believes that the unusual configuration and topography of the site may justify the current location of the pump house; therefore staff recommends that the Board of Adjustment approve variance requests two and three.
27. Variance request number four is to allow the retaining wall for the proposed pool to be built with an average height of 11.5 feet where 11 feet is the maximum average height allowed. This request relates to the average height of the retaining wall on the whole rather than an individual maximum allowable height. In addition to providing the standards for the maximum allowable height of a retaining wall, Table 1201.6.2.4 in the Maricopa County Zoning Ordinance (MCZO) also requires that the average height of a

retaining wall cannot exceed a certain height based on the slope category. In this case, the requirement for the wall is a maximum of 11 feet, since the slope exceeds 35% (Slope Category IV) on the subject site. For reasons of safety, appearance, and due to the extreme topographical conditions present on the site, staff recommends that the Board of Adjustment approve request number four.

28. In summary, the requests made by the applicant to develop this site may seem to be somewhat extreme but, considering the topographic conditions on the site, they provide a reasonable compromise to allow adding a swimming pool to a home on a difficult site. The subject site is part of a subdivision that was recorded before Maricopa County actively protected hillside areas. The original lots were laid out without much thought given to their future development. The overall size of homes built in the area has increased considerably over the years, as has the ability to use modern engineering techniques to solve some of the complex issues related to the terrain. It was probably assumed that large areas would be carved out of the hillside or the site would be filled in with a home built on the level pad created. Today, the applicant must contend with the existing hillside lot configuration which, even though the lot size is considerably larger than required, still constrains development. Staff believes these circumstances create hardships that require the requested variances to properly, and safely develop this site. Staff is recommending approval of these variance requests.

Recommendation: (BA2006029)

29. Staff recommends **approval** of these variance requests based on the following:

- There are unusual circumstances associated with configuration of this property.
- There are topographical hardships present on the site that hinder development.
- The relief requested is the minimum required necessary to provide the applicant with full use and enjoyment of the property.
- These requests do not conflict with the intent of the Zoning Ordinance.

Subject to the following stipulations:

- a) General compliance with the Grading and Drainage Plan received April 7, 2006.
 - b) The applicant shall obtain all necessary as-built permits for the pump house within 120 days of Board approval.
 - c) The applicant shall ensure that all other zoning requirements are met.
 - d) The applicant shall pay additional variance fees of \$60.00 prior to obtaining permits.
30. If the Board finds that a reasonable use of the property can be made without these variances, then these requests should be denied.

mjlw

Attachments: Case Map BA2006029
Zoning Map
Assessor Map
Topographic Survey (March 7, 2006)
Grading and Drainage Plan (April 28, 2006) (3 pages)
Lazin Residence Floor Plan
Lazin Residence Pool Plan
Application
Supplemental Questionnaire
Clearwater Hills E-mail
Photographs (4 pages)